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Error to Circuit Court of City of Suffolk.

Action by Lois Johnson, by next friend, against the Atlantic Coast Line Railroad Company. To review a judgment sustaining a demurrer to her evidence, plaintiff brings error. Reversed.

Jas. H. Corbitt and *John K. Hutton*, both of Suffolk, for plaintiff in error.

Mann & Townsend and *Wm. B. McIlwaine*, all of Petersburg, for defendant in error.

BLISS *v.* SPENCER.

June 12, 1919.

[99 S. E. 593.]

1. Appeal and Error (§ 220*)—Absence of Exception to Commissioner's Report—Assignment of Error.—Where decree in suit to compel an accounting by plaintiff's guardian was based on the report of a master commissioner to which no exception was taken by the guardian, and the disallowance of certain commissions does not appear on the face of the report, the guardian's assignment of error thereto comes too late.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 565.]

2. Guardian and Ward (§ 30 (1)*)—Delegation of Control of Expenditures.—The guardian of a minor cannot devolve upon his ward the duty to regulate her own expenditures for support even with the consent of the ward, and cannot delegate such duty to any other person, thus escaping responsibility for disbursements in excess of the income of the ward made without authority of instrument under which he acts, or, if there is none, without previous authority of the court.

3. Guardian and Ward (§ 30 (3*))—Disbursements in Excess of Income—Allowance—Statute.—Under Code 1904, § 2604, a guardian will not be allowed credit in the settlement of his accounts for disbursements for the support and education of his ward in excess of the income from her estate, unless the disbursements were such as the court would have authorized on previous application; a matter on which the interest of the ward is controlling.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 820.]

4. Guardian and Ward (§ 157*)—Injudicious Expenditures—Sufficiency of Evidence.—In suit to compel an accounting by plaintiff's guardian all income received from her estate, evidence held to show that expenditures for the support and education of plaintiff permitted

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

by defendant guardian were injudicious and improper, and not to be allowed to him under Code 1904, § 2604, to the extent that they annually exceeded the income of plaintiff with which the guardian is chargeable.

5. Guardian and Ward (§ 30 (1)*)—Support and Education—Expenditure of Whole Income—Statute.—Under Code 1904, § 2603, a guardian acting in good faith has the discretion to expend the whole of the income of the estate of his ward for her maintenance and education.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 820, 821.]

6. Guardian and Ward (§ 30 (1)*)—Surplus over Expenditures for Maintenance.—If there is any excess of a ward's income for any year over actual expenditures by her guardian for her support and education, the surplus becomes part of the principal for the succeeding year.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 821.]

7. Executors and Administrators (§ 296*)—Distribution of Estate—Unsuspected Existence of Will.—If an administrator, exercising reasonable prudence, does not think and has no reasonable grounds to think a will exists, he may safely distribute the estate so far as persons taking under a then unknown will are concerned, whether the distribution is within the year of or after the expiration of the year from his qualification.

8. Guardian and Ward (§ 151*)—Right to Commissions—Failure to Charge and Settle Accounts—Statutes.—Under Code 1904, § 2679, guardian of minor held not entitled to commissions on an amount of the total with which he was chargeable as derived from the estate of his ward's grandfather, having been in default in not charging himself with items aggregating such amount, or to commissions on his receipts for years for which, without reasonable excuse, he failed to settle his ex parte accounts.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 825.]

9. Guardian and Ward (§ 151*)—Commissions of Guardian—Credit as of Rest Days.—The commissions to which the guardian of a minor is entitled should be credited as of his rest day at the end of each yearly statement in the settlement of his accounts which is to be made.

10. Guardian and Ward (§ 159*)—Accounting—Decree as to Beginning of Account and Interest.—In view of the fact that the fixing of a rest day for fiduciaries is within the reasonable discretion of the commissioner settling their accounts, and of the court acting thereon, etc., held that decree, in suit by a ward to compel an accounting by her guardian, properly fixed a certain date as that for the beginning of the account of the guardian, who, under Code 1904,

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§ 2608, was chargeable with interest on a certain amount received from the estate of the ward's grandfather from that date.

11. Pleading (§ 36 (2)*)—Suit to Compel Accounting by Guardian—Theory of Bill—Right to Commissions.—A ward who, in her bill to compel her guardian to account, took the position that certain stock owned by her grandfather had been converted into money by the guardian, so that he was chargeable with the money value, cannot insist the guardian should not be allowed commissions on such value under the rule that commissions are not allowable to fiduciaries on unconverted assets distributed in kind, or which should have been so distributed.

12. Guardian and Ward (§ 141*)—Accounting—Unconverted Property.—Where property coming into the hands of a guardian from the estate of his ward's grandmother was never converted into money, never treated by the guardian as converted, or charged to him in his ex parte settlements as converted, the guardian is not chargeable with the money value of such unconverted property.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 825.]

13. Guardian and Ward (§ 151*)—Right to Commissions—Property Improperly or Not at All Converted.—A guardian is not entitled to commissions on property of the estate which he had no authority to convert into money or which he did not in fact convert into money.

14. Guardian and Ward (§ 54*)—Interest on Items of Disbursement.—A guardian is not entitled to interest from the date of expenditure on small individual items of disbursements in the yearly statements; it is only when a large sum is disbursed early in the year, and it would work an unreasonable hardship not to do so, that interest will be allowed the guardian on any item of disbursement from the date of payment.

Appeal from Circuit Court, Prince Edward County.

Suit by Phillippa R. Spencer, by, etc., against B. M. Bliss, guardian. From decree for plaintiff, defendant appeals. Reversed in part, and affirmed in part.

A. B. Armstrong and Watkins & Brock, all of Farmville, for appellant.

J. Taylor Thompson, of Farmville, for appellee.

PENICK'S EX'R *v.* WALKER et al.

June 12, 1919.

[99 S. E. 559.]

1. Wills (§ 440*)—Construction—Intention—Ascertainment from Words.—The primary rule of construction is to determine testator's

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